



23 JUN 2005

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In re Application of :  
KANE, Patrick D. :  
US Application No.: 10/510,518 :  
PCT Application No.: PCT/US02/30997 : DECISION ON  
Int. Filing Date: 30 September 2002 : PETITION UNDER  
Priority Date: 28 September 2001 : 37 CFR 1.137(b)  
Attorney's File Reference: 01696-52555 :  
For: LOCALIZED NON-INVASIVE :  
BIOLOGICAL MODULATION SYSTEM :

This decision is in response to applicants' "Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 CFR 1.137(b)" filed 07 October 2004. The petition is **GRANTED**.

**BACKGROUND**

On 30 September 2002, applicants filed international application PCT/US02/30997. The international application designated the United States and did claim priority to an earlier filed application. The deadline for paying the basic national fee in the United States was thirty months from the priority date, that is 28 March 2004. Applicant missed this deadline.

On 07 October 2004, applicant filed the instant petition for revival accompanied by, *inter alia*, a Transmittal Letter, an Express Mail Certificate, an application data sheet, a preliminary amendment, a copy of PCT/IB forms 301 and 304, Form PCT/IB/308, the first page of the International Publication (WO 03/026618), the International Search Report, an information disclosure and a check for \$1,145.00 which included the payment of the basic national fee and the surcharge for filing the oath or declaration later than 30 months from the earliest claimed priority document.

An oath or declaration of the inventors required by 35 U.S.C. 371(c)(4) has not yet been received.

**DISCUSSION**

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a proper reply, (2) the petition fee required by law, (3) a statement

that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

The submission of the basic national fee satisfies 37 CFR 1.137(b)(1). The payment of the petition fee satisfies the requirement under 37 CFR 1.137(b)(2). Applicant's statement in the petition that "[t]he entire delay in filing the required reply from the due date until the filing of a grantable this petition was unintentional (37 CFR 1.137(b)(3))" satisfies the requirements of 37 CFR 1.137(b)(3). A terminal disclaimer is not required because the application was filed after 08 June 1995, which satisfies the requirements of 37 CFR 1.137 (b)(4). Therefore, the requirements for a grantable petition under 37 CFR 1.137(b) have been satisfied.

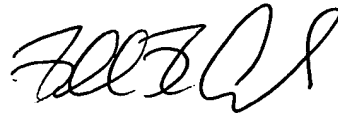
### CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America.

The application is being returned to the National Stage Processing Division of the Office of PCT Operations for continued processing, including the mailing of a Notification of Missing Requirements (PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) is required.



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